

# EXHIBIT L

Videotaped Deposition of

**David Garfinkle**

July 31, 2020

Volume I

Grae

vs.

Corrections Corporation of America, et al.

**Confidential**



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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF TENNESSEE

3                   Civil Action No. 3:16-CV-02267

4           NIKKI BOLLINGER GRAE, Individually and on  
5           Behalf of All Others Similarly Situated,

6                               Plaintiff,

7           vs.

8           CORRECTIONS CORPORATION OF AMERICA, et al.,

9                               Defendants.  
10                               \_\_\_\_\_ /

11                               \*\*\* CONFIDENTIAL \*\*\*

12  
13                   VIDEOTAPED/ZOOM DEPOSITION OF  
14                   DAVID GARFINKLE

15                               Volume I

16  
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18  
19                   Friday, July 31, 2020  
20                   9:38 a.m. - 6:27 p.m.

21                               Franklin, Tennessee

22  
23           Stenographically Reported By:  
24           Debra Duran-Bornstein, CCR, RPR, LCR  
25           Aptus Court Reporting  
                Job No. 10071104

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The video-recorded deposition via Zoom of DAVID GARFINKLE was taken by Counsel for the Plaintiff for all purposes under the Federal Rules of Civil Procedure.

It is agreed that DEBRA DURAN-BORNSTEIN, LCR, RPR, and CCR for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are not waived.

1 The following proceedings began at 9:38 a.m.:

2 THE VIDEOGRAPHER: We are now on the  
3 record. Today's date is July 31, 2020, and the time  
4 is 9:38 a.m.

5 This is the video deposition of David M.  
6 Garfinkle, being taken in the Matter of Nikki  
7 Bollinger Grae versus Corrections Corporation of  
8 America, et al.

9 We are taking this deposition via Zoom,  
10 and my name is Spencer Beneveniste of Aptus Court  
11 Reporting.

12 Will counsel please identify yourselves  
13 and state who you represent.

14 MS. RADCLIFFE: Willow Radcliffe, of  
15 Robbins Geller, for the Plaintiff and the Class.

16 MR. WOOD: Christopher Wood, Robbins  
17 Geller, on behalf of Plaintiff and the Class.

18 MR. LYONS: Christopher Lyons, from  
19 Robbins Geller, on behalf of the Plaintiff and the  
20 Class.

21 MR. BLACK: Kenneth Black, Robbins  
22 Geller, on behalf of the Plaintiff and the Class.

23 MR. GLENNON: Brian Glennon, Latham &  
24 Watkins, on behalf of Defendants and, of course, the  
25 witness.

1 MR. McGEE: Trey McGee, Riley, Warnock &  
2 Jacobson, on behalf of the witness and the  
3 Defendants.

4 And I believe my partner, Steve Riley,  
5 with Riley Warnock & Jacobson, is also on.

6 MR. RILEY: Correct. Thank you.

7 MR. WHITWORTH: And Morgan Whitworth, of  
8 Latham & Watkins, on behalf of the Defendants and the  
9 witness.

10 THE VIDEOGRAPHER: The court reporter  
11 today is Debra Duran, and she may now swear in or  
12 affirm the Deponent.

13 THE STENOGRAPHER: Please raise your  
14 right hand.

15 Do you swear that the testimony you are  
16 about to give in this case will be the truth, the  
17 whole truth, and nothing but the truth?

18 THE WITNESS: Yes, I do.

19 Thereupon:

20 DAVID GARFINKLE  
21 having been first duly sworn remotely was examined  
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. RADCLIFFE:

25 Q. Good morning, Mr. Garfinkle.

1 Q. Okay. And he was the CFO at the time?

2 A. That's right.

3 Q. Okay. You indicated that you prepared the  
4 company's public filings, the 10Qs and 10Ks.

5 Were you the -- the initial drafter of those  
6 documents during that time?

7 A. Yes. I think that's a fair description.

8 Obviously, the 10Ks are a much larger  
9 document, so we involved many subject matter experts  
10 in the initial drafting of the document. 10Qs are  
11 much shorter, so I -- I typically, as controller,  
12 would meet with certain representatives, including the  
13 chief financial officer, to talk about what we want to  
14 disclose, developments during the quarter that need to  
15 be disclosed, and then draft it, we'd submit it out to  
16 various parties for review.

17 Q. Okay. And when you say you would submit it to  
18 various parties for review, who would that include?

19 A. It would include our outside independent  
20 accountants; it would include our disclosure  
21 committee; it would include our outside attorneys; it  
22 would include all the members of the disclosure  
23 committee, which is probably 20 to 25 people of -- of  
24 who represent various departments within the company  
25 and subsidiaries.

1                   So, a lot of people, an extensive review  
2                   process.

3           Q.           Okay. So the -- the types of individuals that  
4           you just listed would receive copies of the initial  
5           drafts of the 10Qs and 10Ks; is that fair to say?

6           A.           Yes.

7                   MR. GLENNON: Objection, foundation and  
8                   vague.

9           BY MS. RADCLIFFE:

10          Q.           Okay. When -- would you explain the next step  
11          in the process after various committees? For example,  
12          the disclosure committee members, as well as the  
13          accountants and outside attorneys, once they got the  
14          drafts of the 10Qs and 10Ks, how, then, would a formal  
15          document come to fruition?

16                  MR. GLENNON: Objection.

17          A.           Back then, most of it was -- you know, the  
18          various reviewers would, like I say, come in various  
19          forms. The -- the disclosure committee typically  
20          would call and -- are you talking about the time when  
21          I was the controller?

22          BY MS. RADCLIFFE:

23          Q.           Correct.

24          A.           Yes. So when I was the controller, many of  
25          the members of the disclosure committee, particularly



1 if they knew they weren't going to be able to attend  
2 the -- the meeting -- and we have 20, 25 people, so  
3 it's difficult to line up everybody to attend those  
4 couple of hours that we reviewed the document -- they  
5 would provide me with comment, either via telephone,  
6 they would mark up copies, send it to me.

7 The same for the accountants, they typically  
8 would mark up copies and ask questions, point to  
9 certain disclosure items and, you know, make sure we  
10 were accurate on them. They would -- the accountants  
11 would tick and tie the numbers, so if they found a  
12 number that was an error, they would circle it or  
13 provide some kind of communication to me that they --  
14 they didn't necessarily agree with the number, so we  
15 had to double-check the number.

16 Then in the disclosure committee meeting,  
17 again, a lot of times I will have had conversations  
18 with various members, if they provide me with comment,  
19 but in that meeting -- and it's much like it is today,  
20 we, you know, page turn the document; we'll flip page  
21 by page, we highlight certain new or sensitive areas  
22 that were not necessarily in the previous document. A  
23 lot of our public filings, as with any public company,  
24 a lot of disclosures are repetitive from quarter to  
25 quarter so we typically highlight those changes from

1       quarter to quarter, so that we can get a good set of  
2       eyes on them and make sure everybody is comfortable  
3       with what we're disclosing.

4               So we -- after the page turn, we -- we go  
5       around the room, generally speaking, and ask if  
6       everybody has had adequate time to review the  
7       document. They would offer comments to make sure --  
8       we would ask -- we've got a checklist of things  
9       that -- to make sure that if there was anything not in  
10      the document that needed disclosure, we'd have  
11      discussions around those things. We would discuss  
12      issues of materiality and things like that.

13      **Q.       And during the time you were the controller,**  
14      **who had final authority regarding the issuance of**  
15      **those Qs and Ks?**

16      A.       That would be the --

17               MR. GLENNON: Object to form.

18               THE WITNESS: I'm sorry.

19               MR. GLENNON: Go ahead.

20      A.       The chief financial officer and the CEO.

21               BY MS. RADCLIFFE:

22      **Q.       And was there ever an instance where the chief**  
23      **financial officer and the CEO did not agree on a final**  
24      **filing for the SEC?**

25               MR. GLENNON: Same objection.

1 A. No.

2 BY MS. RADCLIFFE:

3 Q. And after you became -- well, let's just say  
4 after 2014, you became the CFO of CCA; is that  
5 correct?

6 A. Yes.

7 Q. And that was in approximately May of 2014?

8 A. Exactly. May of 2014.

9 Q. Okay. Did the process change in terms of  
10 finalizing the 10Qs and the 10Ks for filing with the  
11 SEC?

12 A. My responsibility obviously changed, but the  
13 process didn't change.

14 Q. And how did your responsibilities change?

15 A. Well, I converted from a person who was, more  
16 or less, the primary draftsman to somebody who  
17 would review the drafts.

18 Again, I would be involved in the  
19 conversations. So we have a managing director of  
20 finance who primarily drafts it today, so I guess that  
21 part I guess may have changed a little bit. So I meet  
22 with the current controller, with the Managing  
23 Director of Finance currently, and we kind of go over  
24 what -- what we think needs to be disclosed in the  
25 current quarter.

1 activities.

2 **Q. And in your experience as CFO, have you ever**  
3 **hesitated to sign a Form 10K?**

4 MR. GLENNON: Object to form.

5 A. No. I mean, it's a very exhaustive process,  
6 and we described the disclosure committee process,  
7 which is the -- kind of the -- near the end of the  
8 process, and that's the formal meeting that we have to  
9 discuss the disclosures, so -- just to correct the  
10 record or elaborate on the record there.

11 You know, my everyday business activities are  
12 informative as to what we need to disclose for the  
13 quarter, but it is that disclosure committee meeting  
14 at the end where we kind of rehash and conclude that  
15 we've captured everything for the quarter.

16 BY MS. RADCLIFFE:

17 **Q. And who leads the disclosure committee**  
18 **meetings?**

19 A. The vice president of finance, Brian Hammonds,  
20 normally leads the discussion of the review of the  
21 10Q. There's also a government section led by our  
22 internal general counsel who has prepared the  
23 checklist that we review at every disclosure committee  
24 meeting.

25 But I would say the meeting is more or less

1 led by the vice president of finance who is reviewing  
2 the documents.

3 Q. And do you rely on that checklist in  
4 assessing --

5 MR. GLENNON: Form.

6 BY MS. RADCLIFFE:

7 Q. -- whether or not you should sign off on the  
8 filing of a Form 10K?

9 MR. GLENNON: Objection, form.  
10 Foundation.

11 A. I rely on many things in signing the  
12 certifications. The checklist is just one component  
13 of the review process.

14 BY MS. RADCLIFFE:

15 Q. And is it one component of the review process  
16 that you rely on?

17 MR. GLENNON: Same objections.

18 A. It is, but I wouldn't say it's -- you know,  
19 it's -- if we didn't go through that checklist -- it's  
20 not the only thing that we rely on, I guess, is what  
21 I'm saying.

22 BY MS. RADCLIFFE:

23 Q. So just to rephrase the question, the  
24 checklist is one component of the review process, not  
25 the only component, but one component; is that fair to

1 say?

2 MR. GLENNON: Object to form.

3 A. That's correct.

4 BY MS. RADCLIFFE:

5 Q. Okay.

6 A. Yes.

7 Q. And it's one component that you rely on, this  
8 checklist?

9 MR. GLENNON: Object to form.

10 A. Yes.

11 BY MS. RADCLIFFE:

12 Q. Go ahead and pull up Tab 5, please.

13 A. Okay.

14 MS. RADCLIFFE: Tab 5, we will mark as  
15 Exhibit 503.

16 (Thereupon, marked as Plaintiff  
17 Exhibit 503.)

18 BY MS. RADCLIFFE:

19 Q. Do you recognize this document Mr. Garfinkle?

20 MR. GLENNON: Willow, can you give us two  
21 minutes? We're having -- there's a little bit of a  
22 delay.

23 Okay, we got it. Thank you.

24 A. I do.

25

1       between publicly disclosing something and closing the  
2       window. So just because we may have information that  
3       is not public does not create a disclosure obligation.  
4       We have nonpublic information routinely within our  
5       business, but that doesn't mean we're required to  
6       disclose that information.

7       BY MS. RADCLIFFE:

8       Q.       And here, in this sentence, it's referring to  
9       "After discussions with Latham, we concluded that the  
10      disclosure of the specifics about the cure notice  
11      weren't required."

12              So the sentence is referring to the  
13      disclosures --

14      A.       Right.

15      Q.       -- correct?

16              And my question is: Did you or anyone at CCA,  
17      to your knowledge, rely on those discussions with  
18      Latham in determining whether or not to disclose the  
19      specifics about the cure notice?

20              MR. GLENNON: Objection to form.

21              And also advise the witness not to  
22      disclose anything that's protected by the  
23      attorney-client privilege.

24      A.       So I can't disclose what was discussed with  
25      the attorneys. I'm not sure I can answer the

1 question.

2 BY MS. RADCLIFFE:

3 Q. So my question --

4 MR. GLENNON: Willow, let's -- let's take  
5 a quick break. We don't need much time.

6 MS. RADCLIFFE: Let me just ask him a  
7 follow-up question, and then you can have your break,  
8 okay?

9 MR. GLENNON: Sure.

10 I'm not going let him wander too much on  
11 this particular issue until we can talk on the  
12 privilege point.

13 BY MS. RADCLIFFE:

14 Q. The next sentence says, "We did, however, add  
15 disclosures in our risk factors about the potential  
16 for contract terminations resulting from contract  
17 compliance."

18 A. Yes, I see that.

19 Q. Okay. Now, if you can go back to what was  
20 tabbed -- it's -- I believe it's Exhibit 3.

21 A. Three? That's the exhibit. Do you know what  
22 tab number?

23 Q. Tab 3. Sorry.

24 Tab 3. It's previously marked as  
25 Hininger 364.



1 witness not to answer to the extent it's going to  
2 reveal privileged communication. And the form of the  
3 question.

4 BY MS. RADCLIFFE:

5 Q. You can answer.

6 A. So I can answer?

7 Q. As long as you don't tell me anything that is  
8 privileged.

9 A. I'm not sure I can -- I could point to  
10 anything specific. Maybe you need to repeat the  
11 question for me.

12 Q. I'll ask you. For example, did you rely on  
13 in-house and outside counsel with respect to your  
14 representations in CCA's public filing of 10Ks and Qs  
15 that you signed regarding the high standards of CCA's  
16 operations?

17 MR. GLENNON: Same objection.

18 But you can answer, Mr. Garfinkle.

19 A. Well, you know, when it comes to outside  
20 counsel, outside counsel does not have the expertise  
21 that our company has. You know, I think -- so, you  
22 know, I wouldn't have relied on outside counsel in  
23 assessing, you know, specific high quality statements  
24 to secure facilities.

25 MR. GLENNON: Hold on, Willow. Please

REPORTER CERTIFICATE

STATE OF TENNESSEE

COUNTY OF WILLIAMSON

I, the undersigned, a Licensed Court Reporter  
of the State of Tennessee, do hereby certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were duly sworn; that a record of the  
proceedings was made by me using machine shorthand,  
which was thereafter transcribed under my direction;  
that the foregoing transcript is a true record of the  
testimony given.

Further, that if the foregoing pertains to  
the original transcript of a deposition in a federal  
case, before completion of the proceedings, review of  
the transcript [ X ] was [ ] was not requested.

I further certify that I am neither  
financially interested in the action nor a relative or  
employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: August 3, 2020



Debra Duran-Bornstein  
RPR, CCR, LCR No. 808